Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board	)	
on Universal Service	)	
	)	
TracFone Wireless, Inc.'s Petition for	)	
Modification of Annual Verification Condition	)	
	)	
TracFone Wireless, Inc.'s Petition	)	WC Docket No. 03-109
For Waiver of 47 C.F.R. § 54.403(a)(1)	)	

REPLY COMMENTS OF TRACFONE WIRELESS, INC.

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July 20, 2009

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Summary

The initial comments do not refute TracFone's demonstration of the existence of good cause for waiver of Section 54.403(a)(1) of the Commission's rules to allow it to receive maximum Tier One Lifeline support without regard to incumbent local exchange carrier subscriber line charges, provided that TracFone pass through to Lifeline customers as Lifeline benefits the full amount of universal service fund support it receives plus $3.50. TracFone has explained exactly how it calculates its Lifeline benefits and, contrary to the assertion of NASUCA, its Lifeline benefit exceeds that mandated by the Commission in the Katrina emergency Lifeline program. There has been no demonstration that the requested waiver would provide TracFone with a competitive advantage over any other Eligible Telecommunications Carrier which competes in the provision of Lifeline service, especially since TracFone has proposed a rule change which would benefit all Lifeline providers and customers. Any modest increase in the size of the USF resulting from the requested waiver would be worthwhile since the waiver would materially improve Lifeline benefits to those that need them, and could be offset by appropriate USF reforms.

Neither have any commenters provided any reason why TracFone's annual verification conditions should not be based on statistically-valid samples of its Lifeline customers just as all other ETCs are required to do. There is no public interest reason why one ETC should be required to survey each of its thousands of Lifeline customers annually when all other ETCs are subject only to an annual verification obligation based on sampling. The Commission's generally-applicable ETC annual verification requirement is no less appropriate for TracFone than it is for any other ETC. However, TracFone agrees with the District of Columbia Public

Service Commission that states and ETCs work cooperatively to allow access to data bases to prevent duplicative Lifeline enrollments by the same customers.

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REPLY COMMENTS OF TRACFONE WIRELESS, INC.

Presently pending before the Commission are two petitions recently filed by TracFone Wireless, Inc. ("TracFone"). On April 27, 2009, TracFone petitioned the Commission for modification of the annual verification condition which had been imposed upon TracFone as a condition of the Commission's 2005 approval of TracFone's petition for forbearance from the requirement that Eligible Telecommunications Carriers provide service in whole, or in part, over their own facilities.[1] On May 4, 2009, TracFone petitioned the Commission for waiver of Section 54.403(a)(1) of the Commission's Rules (47 C.F.R. § 54.403(a)(1)) so as to allow it to receive the maximum amount of Tier One Lifeline Support without regard to incumbent local exchange carriers' (ILEC) subscriber line charge levels, provided that TracFone provide to every Lifeline customer an additional Lifeline benefit of $3.50 to be funded by TracFone.

Comments on both petitions were filed July 6. Pursuant to Commission public notices, reply comments on both petitions are due July 20, 2009. For the convenience of the parties who

[1] Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), 20 FCC Rcd 15095 (2005). ("TracFone Forbearance Order").

filed comments and for the Commission and its staff, TracFone will reply to comments on both petitions in this consolidated reply.

I. Commenters on the Petition for Waiver of the Lifeline Support Rule Have Failed to Refute TracFone's Showing that Good Cause Exists For the Requested Waiver

Underlying TracFone's request for waiver of the Lifeline support rule is one very simple objective: TracFone wants to be able to offer low income consumers the maximum Lifeline benefit and that benefit should be available to all of its SafeLink Wireless Lifeline customers, without regard to the state where they reside and without regard to whether the ILEC providing wireline telephone service where they reside charges a subscriber line charge at the capped amount ($6.50) or some lower amount. The waiver petition was not filed in a vacuum. Rather it was filed in conjunction with a petition for rulemaking filed by TracFone with the Commission on March 9, 2009. In that petition, TracFone proposed that Section 54.403(a)(1) be amended so as to de-link allowable Tier One support from ILEC SLCs. Whatever logical nexus may have existed between ILEC SLCs and Lifeline support levels in 1997 when the rule was promulgated no longer exists today since many ETCs who offer Lifeline service are not subject to the Commission's access charge rules and do not assess SLCs.[2] TracFone petitioned for waiver in the hopes that a prompt approval would enable it to offer all of its Lifeline customer the maximum benefit without having to await completion of the rulemaking process.

Among those commenters opposing TracFone's request, perhaps the most surprising is the National Association of State Utility Consumer Advocates (NASUCA). NASUCA's comments are surprising because its stated mission is to represent "the interests of utility consumers."[3] It is difficult to imagine an organization supposedly committed to the interests of

[2] See Petition for Rulemaking, CC Docket No. 96-45, filed by TracFone March 5, 2009.
[3] www.nasuca.org/about/.

consumers offering a series of objections whose sole purpose seems to be to preclude an ETC from providing an enhanced benefit to those consumers who most need help -- low income consumers who qualify for Lifeline support.

Among its objections, NASUCA questions how TracFone would "quantify" the additional $3.50 benefit. TracFone has explained this in prior Commission submissions and in its ETC petitions in every state where it has petitioned for ETC designation. However, for NASUCA's edification, once again, here is how TracFone calculates its Lifeline benefit:

Total Lifeline Support (Tier One + Tier Two + Tier Three) + $3.50 / $0.20.

By this formula, TracFone meets the commitment it has made in every ETC petition which it has filed with this Commission and with every state commission where it has sought ETC designation, *i.e*., that it will pass through to Lifeline customers in the form of Lifeline benefits one hundred percent of the support which it receives from the Universal Service Fund (plus $3.50 from its own resources). Where Tier One support is $6.50, the sum of Tier One, Tier Two ($1.75) and Tier Three ($1.75) equals $10.00. Adding TracFone's $3.50 to $10.00 raises the benefit amount to $13.50. TracFone then divides the total benefit amount by $0.20 -- TracFone's per minute rate for prepaid wireless service. Rounding up to the next $0.20 increment produces a monthly benefit of 68 minutes. The same formula is applied where the Tier One amount is less than $6.50. For example, if the available Tier One amount is $5.00, the sum of the three tiers would be $8.50. That amount plus $3.50 equals $12.00. Dividing $12.00 by $0.20 produces a monthly Lifeline benefit of 60 minutes.[4]

[4] TracFone offers uniform Lifeline benefits statewide. It does not vary the amount of the benefit within a state based on differences in ILEC SLCs. Instead, it calculates the statewide benefit based on a weighted average of the level of support within each state.

There is no public interest reason why a low income consumer residing in a state where the average ILEC SLC is less than $6.50 should receive 8 minutes less of a wireless service Lifeline benefit each month than should a similarly situated customer who resides in a state where the average ILEC SLC is $6.50. Elimination of this anachronistic disparity is all that underlies TracFone's waiver petition and its proposed rule change. NASUCA has failed to explain how those consumers whose interests it represents would benefit from denial of this improved benefit without regard to where they live.

NASUCA also criticizes the amount of TracFone's Lifeline benefit and in support of that criticism, it cites to the Commission's Hurricane Katrina Order[5] where the Commission established the emergency Lifeline program for Katrina victims based on $130 in support for a free wireless handset and at least 300 minutes of use. What NASUCA fails to mention in its inapposite Katrina program comparison is that the 300 minutes of use was for the total duration of the program -- about seven months.[6] In other words, under the Katrina program benefit, participating ETCs received about $18.00 per month in support and were expected to provide a free phone and about 42 minutes per month (somewhat more for those carriers who commenced the program after its November 2005 inception). In comparison, TracFone receives a $10.00 in monthly support (less in areas where the ILEC SLC is below $6.50) and, in return, provides a free handset and 60 to 68 minutes of use per month. In short, TracFone's SafeLink Wireless program compares very favorably with the Katrina program established by the Commission in 2005.

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[5] Federal-State Joint Board on Universal Service, 20 FCC Rcd 16883 (2005).
[6] The Katrina Lifeline program was announced in October 2005 (with the first emergency ETC designations being issued several weeks later) and the program was terminated June 1, 2006.

For reasons best known to NASUCA, NASUCA disputes the fact that TracFone provides $3.50 from its own resources as part of the Lifeline benefit.[7] It bases this dispute on the assertions that 1) "in most states, the Tier Three benefit is picked up by a an intrastate universal service fund . . ."[8] and that some states, such as Ohio, provide a *quid pro quo* of allowing pricing freedom.[9] Whatever may occur in "most states" and with other ETCs, TracFone has never asked for nor received a single dime in support from any intrastate universal service fund, and it has no plans to do so. As for a "pricing freedom" *quid pro quo*, CMRS services, including those of TracFone, are not subject to rate regulation in any state, nor can they be, pursuant to Section 332(c) of the Communications Act. Thus, there would be no "pricing freedom" which any state could bargain for in exchange for increased Lifeline benefits.

NASUCA as well as Sprint Nextel object to TracFone's waiver request on "competitive" grounds.[10] The assertion that the instant waiver request was somehow crafted to favor TracFone is belied by the fact that it was filed several months <u>after</u> TracFone petitioned for a rule change. Amendment of the rule as proposed by TracFone would benefit every ETC who desires to offer a maximum Lifeline benefit -- including Sprint Nextel.[11] What could possibly be more competitively neutral than a rule change which would be equally available to all ETCs who choose to avail themselves of the rule change?

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[7] NASUCA Comments at 9.
[8] *Id*.
[9] *Id*.
[10] *Id*., at 708; Sprint Nextel Comments at 4.
[11] The Independent Telephone and Telecommunications Alliance (ITTA) also complains that the requested waiver would be benefit only TracFone. ITTA comments at 3. Like Sprint Nextel, ITTA disregards the fact that the rule change proposed by TracFone would benefit all ETCs and all ETCs' Lifeline customers. In prior comments, ITTA opposed the rulemaking petition as well.

Sprint Nextel alleges that the requested waiver would "give TracFone an unwarranted competitive advantage over other competitive ETCs . . . ."[12] Sprint Nextel seems to be concerned that it would somehow be competitively disadvantaged if TracFone received a waiver. Of course, Sprint Nextel would only be competitively disadvantaged in the market for Lifeline services if it were actively in the market to provide Lifeline service. Based on recent publicly available data, Sprint Nextel's interest in competing to offer Lifeline service is, at best, questionable. The Universal Service Administrative Company (USAC) publishes the amounts of Lifeline support received by ETCs. According to USAC's data,[13] for 2008, Sprint Nextel received the following Lifeline support amounts:

Alabama	$2,246
Arizona	936
Arkansas	275
Florida	8,586
Georgia	3,245
Hawaii	11
Indiana	1,322
Iowa	232
Kansas	673
Kentucky	2,248
Louisiana	1,696
Michigan	22
Mississippi	148
New Mexico	306
New York	10,024
North Carolina	367
Pennsylvania	82
Puerto Rico	1,587
Tennessee	5,303
Texas	20,046
Utah	302
Virginia	2,499

[12] Sprint Comments at 4.

[13] USAC FCC Filings for Third Quarter 2009, Appendices, Table L105, accessible at http://www.usac.org/about/governance/fcc-filings/2009/Q3/L105%20-%20Annual%20Low%20Income%20Support%20Amounts%20by%State%20and%20Company%20through%204Q2008.xls.

Washington	$2,203
West Virginia	1,926
Wisconsin	229

The above amounts are the amounts of Lifeline support received by Sprint Nextel during all of 2008. TracFone did not even commence Lifeline service until the fourth quarter of 2008, and then only in a few states -- Tennessee, Florida, Virginia. Based on these very miniscule amounts of Lifeline support which Sprint Nextel received, it is apparent that Sprint Nextel serves few Lifeline customers anywhere (less than one in Michigan). Even without the benefit of the waiver which Sprint Nextel opposes, it does not appear that Sprint Nextel has any serious intention of actively competing to provide Lifeline service anywhere. Given these circumstances, it strains credulity for Sprint Nextel to oppose a waiver on the basis that it would be competitively disadvantaged in serving a market segment which, by all appearances, it chooses not compete to serve.

The Oregon Public Utility commission opposes TracFone's waiver petition on the basis that the Commission should "grant no waiver related to the 'equal support' rule.[14] Of course, that objection ignores the fact that TracFone's request for waiver of the Lifeline support rule is no way related to the equal support rule. That rule, more commonly referred to as the Identical Support Rule, enables competitive ETCs to receive high cost support based on the costs of the ILECs serving the same areas. It is therefore a high cost support rule. TracFone does not seek high cost support and, pursuant to the conditions attached to the Commission's <u>TracFone Forbearance Order</u>, it is not entitled to receive high cost support.

One common theme which runs through the comments of those who opposed the Lifeline support waiver request is that waiver would increase the amount of Lifeline support and would

[14] Comments of the Oregon Public Utility Commission at 1.

place upward pressure on the size of the USF. TracFone shares those concerns about USF fund growth and for that reason has consistently advocated USF reforms which would limit fund growth. It believes that USF support, particularly high cost support, should go to those providers who need the least USF support. For that reason, TracFone has long favored reverse auctions. It also has consistently advocated abolition of the Identical Support rule, and supported the Commission's prudent implementation of a cap on competitive ETC high cost support despite the fact TracFone is itself a competitive ETC.

However, objecting to a proposal which would have a modest upward impact on the USF but which would materially enhance the Lifeline benefits available to low income consumers seems to go the heart of what the universal service fund really about. Clearly, affordable telecommunications service in rural high cost areas is important, but just as important, perhaps more so, is ensuring that all households, irrespective of where they are located, irrespective of economic status, have available and affordable telecommunications service. The Lifeline program has the potential to achieve that goal. The Communications Act defines universal service, in part, as "an evolving level of telecommunications services."[15] Under the state of that evolution circa 1997, Lifeline may have been appropriately limited to wireline local exchange service with subsidies available to discount billed rates for that service. In 2009, consumer expectations and needs, and indeed, technology itself have evolved such that an affordable Lifeline-supported wireless option for those who choose it has become an important part of universal service. Whatever modest increase in the size of the USF will result from the requested waiver will be more than offset by the ability of ETCs to offer an improved wireless

[15] 47 U.S.C. § 254(c)(1)

Lifeline option and thereby encouraging greater participation in this important, but historically underutilized program.

II. Notwithstanding a Few Objections of Commenting Parties, Modification Of the Annual Verification Condition in the TracFone Forbearance Order Is Warranted and Appropriate

Only a few parties have commented in opposition to TracFone's request for modification of the special annual verification condition imposed on TracFone in the TracFone Forbearance Order. In that order, the Commission conditioned its grant of forbearance on a requirement that TracFone verify annually that each of its Lifeline customers 1) is still head of household and 2) receives Lifeline-supported service only from TracFone. All that TracFone seeks in its modification petition is that the annual verification condition imposed on it alone as part of the forbearance process be made consistent with the requirement applicable to all ETCs that they verify annually that their Lifeline customers remain eligible for Lifeline based on surveying a statistically-valid sample.[16]

Those few commenters who addressed the annual verification modification request seem to be basing their opposition on what best can be characterized as "general principles." For example, without citing any substantive reason not to approve the requested modification, Sprint Nextel seems to object to the fact that TracFone has asked for more waivers and modifications than Sprint Nextel deems proper ("The instant proceedings involve further requests from TracFone for dispensation from certain ETC rules or requirements.").[17] As noted above and in the petition for modification, TracFone merely seeks a modification such that the annual verification procedures to which it is subject are comparable with those applicable to all other

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[16] That requirement is codified at 47 C.F.R. § 54.410(c)(2). Of course, TracFone annual verification surveys will be conducted with all applicable Commission requirements for such statistically-valid surveys. See Lifeline and Link-Up, 19 FCC Rcd 8302 (2004), Appendix J.

[17] Sprint Nextel Comments at 3.

ETCs -- including Sprint Nextel! It seems rather strange that in the one portion of its comments, Sprint Nextel complains that granting a waiver to TracFone would give it a competitive advantage, but in another portion of the same comments it complains that TracFone should not be subject to the same annual verification procedures as its competitors -- including Sprint Nextel![18]

Of those opposing the modification request, only the Public Service Commission of the District of Columbia (DCPSC) offered any substantive reasons, and those concerns do not warrant denial of the requested modification. The DCPSC notes the potential for "double dipping" -- continuing to receive more than one Lifeline subsidy per household.[19] TracFone does not dispute the theoretical possibility that some unscrupulous consumers might attempt to obtain both wireline and wireless Lifeline-supported service. What the DCPSC disregards that the incentive to double dip works both ways -- just as current wireline Lifeline customers might attempt to secure a wireless Lifeline-supported service in addition to their wireline Lifeline-supported service, so too, might a wireless Lifeline customer not currently enrolled in an ILEC's wireline Lifeline program seek to obtain wireline Lifeline-supported service in addition to its wireless Lifeline service. The logical answer is for all ETCs to be subject to the same annual verification requirement.

The Commission's generally-applicable annual verification rule (based on statistically-valid random samples) represents a reasonable balancing between the competing objectives of

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[18] The Pennsylvania Public Utility Commission (PA PUC), presumably in fulfillment of its duties to serve the interests of utility consumers in the Commonwealth of Pennsylvania, also opposes the petition for modification of condition. Like Sprint Nextel, the PA PUC complains about TracFone's requests for what it misleadingly and pejoratively calls "special accommodations." PA PUC Comments at 2. However, the PA PUC does not offer a single substantive reason why the requested modification should not be granted.
[19] DCPSC Comments at 6.

making Lifeline enrollment and continued participation relatively simple for qualified low income consumers on the one hand, and preventing fraud, waste and abuse on the other hand In the absence of any data that the current annual verification requirement is not achieving that objective, there is no valid reason why the same requirement should not be applicable all ETCs, without regard to whether they are wireline or wireless, prepaid or post-paid. If the rule is inadequate, it should be fixed. If it is sufficient, it should be applicable to all providers. Special annual verification requirements imposed on individual ETCs, whether as part of the forbearance process or otherwise, are inappropriate and unnecessary. Such special company-specific requirements should be eliminated in the absence of evidence that they are needed. That is all that TracFone's modification petition requests.[20]

As noted above, the DCPSC has not provided any information which would warrant denial of the modification petition. However, its suggestion that state administrators work with ETCs to guard against double dipping by allowing access to enrollment lists of other Lifeline programs for cross-checking has merit.[21] TracFone favors any cooperative efforts between ETCs and state governments to facilitate access to the data bases necessary to confirm and annually verify Lifeline enrollment eligibility.

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[20] The assertion in the DCPSC Comments at p. 7 that TracFone filed its petition for modification "probably after being instructed by the FCC staff" is absolutely baseless and is categorically denied.

[21] DCPSC Comments at 8.

Conclusion

For the reasons explained in these reply comments, none of the parties who have commented in opposition to TracFone's two pending petitions -- its petition for waiver of Section 54.403(a)(1), and its petition for modification of the annual verification condition, have provided any factual, legal or public policy basis to deny either. Accordingly, TracFone respectfully requests that both petitions be promptly granted.

Respectfully submitted,

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July 20, 2009

CERTIFICATE OF SERVICE

I, Raymond Lee, a Legal Secretary with the law firm of Greenberg Traurig, LLP, hereby certify that a copy of the foregoing Reply Comments of TracFone Wireless, Inc. was served by first-class mail, proper postage prepaid to the persons listed below, on this 20th day of July 2009.

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